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IN THE

Supreme Court of the United States

OCTOBER TERM 1945, NOS. 925-933

GERMAN-AMERICAN VOCATIONAL LEAGUE, INC., *Petitioner, Appellant below,*
vs.
UNITED STATES OF AMERICA, *Respondent, Appellee below.*

D. A. B. RECREATIONAL RESORT, INC., *Petitioner, Appellant below,*
vs.
UNITED STATES OF AMERICA, *Respondent, Appellee below.*

FRITZ SCHROEDER, *Petitioner, Appellant below,*
vs.
UNITED STATES OF AMERICA, *Respondent, Appellee below.*

ALBERT ROBERT BERTRAM, *Petitioner, Appellant below,*
vs.
UNITED STATES OF AMERICA, *Respondent, Appellee below.*

GUENTHER GIBBE, *Petitioner, Appellant below,*
vs.
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OTTO BREMER, *Petitioner, Appellant below,*
vs.
UNITED STATES OF AMERICA, *Respondent, Appellee below.*

THEODORE KOEHN, *Petitioner, Appellant below,*
vs.
UNITED STATES OF AMERICA, *Respondent, Appellee below.*

JOSEPH LIEBLEIN, *Petitioner, Appellant below,*
vs.
UNITED STATES OF AMERICA, *Respondent, Appellee below.*

GUSTAVE SCHMIDT, *Petitioner, Appellant below,*
vs.
UNITED STATES OF AMERICA, *Respondent, Appellee below.*

PETITION FOR WRITS OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRITS OF CERTIORARI.

To the Honorable the Supreme Court of the United States.

Your petitioners respectfully show:

I.

Summary Statement of the Matters Involved.

1. This is a petition for writs of certiorari to the United States Circuit Court of Appeals for the Third Circuit in nine appeals to said Court which were consolidated into one record and argued, considered and decided as one appeal. The grounds upon which the petition herein is based are that the decision of the Circuit Court of Appeals, as expressed in the opinion of the majority of that Court, and involving a federal question, is in conflict with decisions of this Court and decisions of other Circuit Courts of Appeals, and is contrary to the weight of authority.

2. The nine petitioners are among twenty-nine defendants and fifty-seven co-conspirators (not indicated) named in an indictment containing two counts. At the conclusion of the case the trial Court dismissed the first count and the case went to the jury on the second count of the indictment. The indictment was dismissed as to two of the defendants who were on trial. A directed verdict of not guilty was granted as to two other of the defendants. The jury found seven of the defendants on trial not guilty. The jury disagreed as to two other defendants on trial, and the nine defendants who appeal were found guilty. Two of these defendants, German-American Vocational League, Inc. and D. A. B. Recreational Resort, Inc., are corporations.

3. The gist of the charge in the indictment is that the defendants and their co-conspirators conspired to "cause, procure, assist, aid, abet and counsel" the German-American Vocational League, Inc., alleged to be an agency of the German Reich, to refuse and neglect to file the registration statement required under the McCormack Act and to defraud the United States, and that some of the defendants performed overt acts to effect the object of the conspiracy. While the German-American Vocational League is a New York corporation, the Government relied upon certain alleged overt acts done by some of the defendants in New Jersey to give the United States District Court in that district jurisdiction in the premises.

4. Before issue was joined a motion was made to quash both counts of the indictment, which motion was denied. At the end of the Government's case and at the end of the entire case motions were made for a directed verdict of not guilty and were denied as to petitioners.

5. Before the Court charged the jury various requests to charge were made by all of the defendants. Many of them were charged by the Court but some of them, particularly those with respect to the proof necessary to establish the existence of a conspiracy and the proof necessary to establish an agency under the McCormack Act, were denied. The individual defendants who were convicted and who appeal received two years' sentences and the two corporate defendants were fined $5,000 each. Sentence as to the defendant Gustave Schmidt was suspended.

6. Appeals from the judgment of the District Court were taken to the United Circuit Court of Appeals for the Third Circuit which, by a divided court, affirmed the judgments of the District Court on January 31st, 1946.

II.

Questions Presented.

The questions presented are:

1. Was there any proof of an agency contract between German-American Vocational League, Inc. and a foreign principal as contemplated in the McCormack Act (Act of June 8, 1938, 52 Stat. 631, as Amended by Act of Aug. 7, 1939, 53 Stat. 1244) so as to require registration with the Secretary of State;

2. Was there proof of a conspiracy between the defendants and their co-conspirators to advise and counsel one named conspirator (German-American Vocational League) to violate the McCormack Act to defraud the United States;

3. Is "propaganda" the subject of expert testimony and was the testimony adduced by the Government proof that the defendants were engaged in disseminating propaganda for the German Reich;

4. What are the proper limits of cross examination of a witness whose credibility is under attack, and whose testimony is relied upon in large measure to establish the alleged conspiracy.

5. Did the trial Court err in refusing to charge the jury as requested by the defendants with respect to the proof required to establish a contract of employment as contemplated by the McCormack Act.

III.

Statement of the Case.

The Government at the trial called one Arthur H. Volbers who had been a member in Germany of D. H. V., the parent organization in 1922, (R. 17a) and who joined the New York local in 1924 (R. 19a) and was national treasurer or secretary from 1934 to 1939 (R. 20a), who testified that prior to 1890 there existed in Germany, with headquarters at Hamburg, an organization on the order of a union of Commercial workers, clerks, bank employees, etc. known as D. H. V. with branches in other parts of the world including a local in New York, (R. 143a). The New York local was formed about 1902 and incorporated under the New York Membership Corporation Law in 1928, under the name D. H. V., German-American Commercial League. In 1936 its name was legally changed to German-American Vocational League and is generally known as D. A. B.,

which hereinafter will be used for the sake of brevity (R. 19a). It had four or five chapters in the United States. At first one-half of the dues of the members was kept in the United States and the other half sent to the parent organization in Hamburg, for which the members were entitled to unemployment relief and a monthly publication sponsored by D. H. V. in Germany and known as "The German Merchant in Foreign Countries", (R. 21a). In 1936 the name of the publication was changed to "The German in North America" and the magazine was then sponsored by the German Labor Front, a part of the German Government (R. 22a).

After 1935 or 1936 members were made up of people of all trades and professions (R. 24a).

After 1933, when the Government of Germany came under the control of the National Socialists about fifty per cent of the dues continued to be sent to Germany without any correspondence and the pension rights and unemployment relief were preserved (R. 42a).

In June or July, 1936, discussions were held in New York with one Euting, a representative of the German Labor Front which resulted in a written agreement to the effect that after January 1, 1937, dues of the members who were American citizens would be kept in New York and seventy-five per cent of the dues of members who were German Nationals would be sent to Germany. Discussion also included the question of the refund by the parent organization of the dues previously sent to Germany by members who were American citizens. Euting was told that any funds refunded would be invested in a country place and he promised his assistance to get the refund from the German

Labor Front. The written contract was entered in about July 1936, but no copy was produced. It provided also for the return to D. A. B. of all dues paid between 1933 and 1936 by American citizen members, the amount to be computed and agreed upon later (R. 50a to 62a).

The German Labor Front paid between $12,000 and $13,000 in 1937 and 1938. The payment was made by one Zeglin, the representative of the German Labor Front. After the agreement went into effect in January, 1937, Zeglin, who was, under the agreement, to take care of the German National members, had a desk at the D. A. B. office. The money that was refunded came through other countries such as South America, England and Holland (R. 69a, 70a).

Zeglin was registered with the Secretary of State as a German Consulate representative (R. 71a).

The money was deposited in the D. A. B. bank account and about $4,000 was used toward the purchase of Camp Bergwald at Riverdale, New Jersey, and the rest for overhead expenses (R. 71a).

The agreement also provided for a certain number of copies of the publication of the German Labor Front including "The German in Foreign Countries" technical magazines and various trade papers to be sent to D. A. B. for distribution to its members. It also provided for German members to use the recreational facilities of D. A. B. in this country and Americans who went to Germany could use the same facilities there (R. 72a, 73a).

In 1938, it came to the attention of the officials of D. A. B. that Congress was considering the control and registration

of propaganda agents for foreign principals. Thereupon the officers of D. A. B. obtained the advice of their lawyers and decided to cancel the agreement with the German Labor Front rather than register with the Secretary of State if the bill passed (R. 77a to 92a).

After the cancellation of the contract in the fall of 1938, Zeglin, who had been in Germany, returned and said that he was going to set up his own German Organization and left the offices of D. A. B. entirely (R. 102a). He took his desk and files to the office of the German Consular office and operated under the name "Association of German Nationals" and with very few exceptions, the German National members of D. A. B. left the D. A. B. (R. 102a).

The by-laws of D. A. B. amended July 7, 1938, provided for two classes of members, resident and non-resident, and American citizens of German birth or descent were eligible. A few German Nationals re-entered the organization (R. 104a to 108a).

D. A. B. had a youth group under the charge of the defendant Lieblein which went to the summer camp at Bergwald (R. 112a).

In 1937, Lieblein, Heinz John and one Stecher, members of the youth group, made a two months trip to Germany where they took part in sport activities at a youth camp which was under the auspices of the Hitler Youth Movement (R. 113a and 115a).

The defendant Gustave Schmidt, who was suffering from tuberculosis, went to Germany for treatment. The D. A. B. and Mr. Schmidt each paid part of his travelling expenses while hospital bills and maintenance in Germany were paid through D. A. B. there (R. 116a).

Prior to the cancellation of the contract with the German Organization in 1938, D. A. B. had shown films such as "Echo of the Home Land" and "Triumph of Will" which had been obtained from German Railroads Information Bureau but after the cancellation of the contract in 1938, no German films were shown (R. 125a-128a).

When the money was repaid by the German Labor Front to D. A. B. a list came from Germany showing the amount repaid and credited to each member, at the average of about $25.00 (R. 134a).

After Zeglin withdrew his group of German Nationals, the two organizations were separate and distinct, and rivals (R. 138a).

$3,500.00 was still due D. A. B. from the German organization, but it was never repaid although repeated efforts were made to get the money (R. 139a).

When Camp Bergwald was purchased title was taken in the name of a separate Corporation "D. A. B. Recreational Resort, Inc." a stock corporation; all of the stock was owned by D. A. B., and D. A. B. loaned it about $3,000., entry of which appeared on the books of D. A. B. and which has never been repaid (R. 140a, 141a).

The original parent organization was a union with employment service, old age pension, and sick and death benefits, with branches throughout the world, where young German immigrants coming to a strange country could find jobs and be greeted as newly arrived inhabitants of whatever land they happened to come to. The United States group also had a small summer home, a singing group, a card playing group, stamp collecting and musical groups (R. 144a).

After the incorporation in 1928, members in New York continued to be entitled to benefits of the old organization based upon their years of membership (R. 145a).

Each chapter had its own office (R. 146a).

At meetings of the various chapters programs for entertainment and matters of that kind were mostly discussed (R. 147a).

The showing of films was not secret and many of them were exhibited in other American organizations and universities (R. 147a).

In 1934 or 1935, the parent organization together with the fund which had been created for it was taken over by the German Labor Front, at which time the troubles of the American organization began (R. 148a).

At the meeting of the Board of Directors March 1, 1938, at which the refund was discussed, none of the defendants on trial was shown to be a director or present (R. 150a).

The papers and magazines which came from Germany and the one printed in New York was also sent to the large libraries in the United States (R. 156a).

Legal advice was sought in 1938 to make sure whether the organization should register, and it was not registered because counsel advised them to cancel the contract and then it would not come under any of the provisions of the McCormack Act which went into effect September 8, 1838. They were told they did not have to register, because they were not an agency of any German organization. All directors felt that after the ending of the contract with the German organization they were not connected in any way with

any agency of the German Reich or any other German organization (R. 157a to 159a).

Sick benefits and unemployment insurance were regularly paid from Germany for 20 years until the contract in January, 1937, was cancelled (R. 170a). The money received back from Germany represented money paid by United States citizens from 1933. The balance paid in by German Nationals was never refunded (R. 172a). D. A. B. took care of all sick and unemployment benefits although it maintained no sinking fund and loaned the money refunded from Germany to D. A. B. Recreational Resort, Inc., for the purpose of building Camp Bergwald (R. 173a).

There was one employee who did nothing but get work for unemployed members without charge (R. 178a).

When Zeglin left to form his own organization, he took with him the German Nationals, about 65% of the whole membership (R. 182a). D. A. B. avoided using the German Labor Front for recruiting members (R. 566a), and was not under instructions from any German organization (R. 567a).

After the contract between D. A. B. and the German Labor Front was cancelled in 1938, there were no secret understandings, agreements, or arrangements with the German Labor Front (R. 569a) and no discussion of such (R. 570a).

One Otto Johannsen, who was also called by the Government, testified that he had also been a member of D. H. V. in Germany, and was national president of D. A. B. from 1923 to 1938 and president of D. A. B. Recreational Resort, Inc., from the time of its incorporation, June 15, 1937, until 1938 (R. 273a, 274a). He testified substantially as

did Volbers concerning the relationship between D. A. B. and the parent organization in Germany until after the relationship was terminated in 1938.

His testimony as to the negotiations with Euting was practically the same as Volbers' (R. 287a). He testified specifically upon his direct examination that the agreement between D. A. B. and the German Labor Front was cancelled for various reasons, one of which was that D. A. B. decided "that we didn't want to have any affiliation with a foreign organization as long as our Government did not look with favor upon it" (R. 318a).

There was publicity in the newspapers concerning the McCormack Act before it was finally passed (R. 319a).

As a result of the cancellation of the contract the by-laws were changed and the distribution of the German Labor Front organ called "Der Deutsche Im Ausland" was discontinued (R. 321a), and no lecturers were heard (R. 328a).

Under date of August 18, 1938, a letter was sent to the members advising them that the contract between D. A. B. and the German organization was brought to an end July 31, 1938 (R. 331a).

The only object of Gustave Schmidt, one of the defendants going to Germany in 1936, was for him "to get cured" (R. 340a).

The defendant Lieblein and two other young men were sent to Germany as a reward for their work in the youth group of D. A. B.

Among the speakers before D. A. B. were Collin Ross, and at festivals Dr. Draeger of the German Consulate and

on some occasions Dr. Borchers, the German Consul General (R. 359a and 360a).

Mr. Johannsen identified a number of reports of the New York Chapter from 1933 on and a number of pieces of correspondence.

Upon cross examination, both Volbers and Johannsen testified that there were no secret understandings or agreements between D. A. B. and the German Labor Front which had not been disclosed in Court (R. 483a, 484a, 566a).

The foregoing constitutes the only direct evidence as to any contract, agreement or arrangement between defendant D. A. B. in New York, and D. H. V., the parent organization in Germany or any branch of the German Government from the time D. H. V. was taken over by the German government in 1933.

A mass of testimony was produced by the Government at the trial to show that from the beginning of the Hitler regime the German government absorbed and took over the parent organization in Germany and that the relations between the German organization and D. A. B. continued close until the cancellation of the arrangement between D. H. V. in Germany and D. A. B. in New York in July, 1938. The record is void as to the continuation of any such relationship subsequent to July, 1938.

While in addition to the foregoing there was a further mass of testimony and exhibits relating to various activities of D. A. B. over a period of years, there is an utter lack of any proof either by oral testimony or documentary evidence of any other agreement of any kind whatsoever between D. A. B. and a foreign principal, than that testified to by Johannsen and Volbers.

IV.

Statutes Involved.

Act of June 8, 1938, 52 Stat. 631 as amended by the Act of August 7th, 1939, 53 Stat. 1244 (McCormack Act), pertinent excerpts:

Section 1 (a):

"The term person means an individual, partnership, association or corporation. * * *"

Section 2:

"The term 'agent' of a foreign principal means any person who acts or engages to act or agrees to act as public relations counsel, publicity agent or as an agent, servant, representative or attorney for a foreign principal."

1939 Amendment, *Agent:*

"Any person who receives compensation from or is under the direction of a foreign principal."

Section 2 (c) provides:

"Every person who is now an agent of a foreign principal shall, within thirty days after this Act takes effect, and every person who shall thereafter become an agent of a foreign principal shall forthwith file with the Secretary a Registration statement, under oath, on a form prescribed by the Secretary, which shall set forth:

(1) The name, business address and residence address of the registrant.

(2) Name of the foreign principal or other person or organization for which such person is acting as agent.

(3) A copy of all contracts of employment under which such person acts as such agent, if written, or

a full statement of the terms and conditions thereof if oral.

(4) The date when such contract was made; the date of commencement of activity thereunder and the period in which such contract is to be in effect; the compensation to be paid, if any and the form and time of payment under said contract.

(5) The name of every foreign principal or every person or organization who has contributed or promised to contribute to the compensation provided in such contract and if the registrant be a partnership, association or corporation, a true and complete copy of its charter, articles of incorporation, co-partnership, association, constitution and by-laws and any other instrument or instruments relating to its organization powers and purposes."

Section 5:

"Any person who wilfully violates any provision of this Act shall be punished. * * *"

Title 22 U. S. C. 611, 56 Stat. 249, McCormack Act, 1942 Amendment:

"(c) * * * (1) any person who acts or agrees to act, within the United States, as, or who is or holds himself out to be whether or not pursuant to contractual relationship, a public-relations counsel, publicity agent, information-service employee, servant, agent, representative, or attorney for a foreign principal; * * *"

Title 22 U. S. C. 612:

"* * * (4) Copies of each written agreement and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no contract exists, a full statement of all the

circumstances, by reason of which the registrant is an agent of a foreign principal; a comprehensive statement of the nature and method of performance of each such contract, and of the existing and proposed activity or activities engaged in or to be engaged in by the registrant as agent of a foreign principal for each such foreign principal; * * *

"(9) Copies of each written agreement and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances, by reason of which the registrant is performing or assuming or purporting or has agreed to perform for himself or for a foreign principal or for any person other than a foreign principal any activities which require his registration hereunder; * * *"

V.

Reasons for Allowance of Writs.

(1) The Circuit Court of Appeals, as appears by the opinion of the majority of the Court, decided in effect that the government was not required to prove an express contract of employment to bring the petitioner, German American Vocational League, within the terms of the McCormack Act providing for the registration of agents of foreign principals.

This decision not only violates the clear language of the statute itself but is, we urge, in conflict with the principle decided by this Honorable Court in the case of *Viereck* v. *United States,* 318 U. S. 236.

The minority opinion in the instant case, it is urged, correctly interprets the language of the statute, and should have prevailed.

(2) The government utterly failed to prove the existence of any agreement between the German American Vocational League and a foreign principal, to spread Nazi propaganda and the Circuit Court of Appeals in deciding that "the Government affirmatively alleged and its evidence tended to show that the written contract (cancelled in July 1938) which did not allude to propaganda was not the whole agreement between the parties, reached a conclusion not supported by any evidence in the case.

(3) As the burden of proof to prove the charges in the indictment rested upon the government, it produced two witnesses for this purpose, Johannson and Volbers, officers of German American Vocational League in 1938 to prove the relationship between the League and the German Labor Front. They testified as to the existence of a contract and the only contract that existed and its cancellation in July 1938. The credibility of their testimony was not impeached or contradicted by witnesses for the government or the defense. They were explicit in denying that any other agreement (secret or otherwise) existed. The Circuit Court of Appeals therefore erroneously decided that "the testimony and the credibility of those two witnesses were for the jury to pass upon along with the other evidence in the case", overlooked the utter lack of any proof of the existence of any contract or agreement not disclosed by Johannson and Volbers.

(4) The Circuit Court of Appeals in the majority opinion decided in effect that a person with little experience

may express an opinion which may be received as evidence that certain writings can, according to an analysis developed by the witness be interpreted as propaganda. In support of its decision it relies upon the case of *United States* v. *Pelley,* 132 Fed. (2d) 170, and certain text books on the law of evidence. It is urged that while the testimony of experts in certain fields is admissible that the art or science of determining what is "propaganda" has not been sufficiently developed to permit a further exception to the well established rule concerning "hearsay" testimony.

(5) "For national security reasons" the cross examination of a most discreditable witness (Richards) was limited by the Trial Court. Just what these "national security reasons" were was not disclosed at the trial. While the Circuit Court of Appeals upheld the Trial Court in restricting cross examination, in doing so it is urged that it violated the rule laid down by this Honorable Court in *Alford* v. *United States,* 282 U. S. 687 and the weight of authority.

(6) The Circuit Court of Appeals failed to pass upon the important question as to whether or not the defendants on trial were, since 1938, engaged in counseling or advising at the command or behest of the German Reich, the German American Vocational League not to register as an agent of the German Reich. It was not proved at the trial and such failure of proof was urged on appeal. Yet the Circuit Court of Appeals brushes these contentions and arguments aside by the simple assertion or finding that "It is enough to say that it (the evidence) involved all of them as active participants in the conspiracy charged to a greater or less degree. No errors appear which substantially prejudiced the appellants."

(7) The trial court was specifically requested to charge the contractual elements necessary to be proven in order to bring the German-American Vocational League within the provisions of the McCormack Act. This the Court refused to do. The Circuit Court of Appeals disposes of this ground of appeal (with others) with the statement that "the balance of appellants' points not included in the above discussion have been carefully examined and are without merit."

Wherefore your petitioners pray that a writ of certiorari issue out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Third Circuit, commanding the said Court to certify and send to this Court for its review and determination on a day certain to be therein designated, a full and complete transcript of the record and of all the proceedings of the said Circuit Court of Appeals, in the said case entitled in that court: *United States of America* vs. *German-American Vocational League, otherwise known as Deutsch-Amerikanische Berufsgemeinschaft, or D. A. B., United States of America* vs. *D. A. B. Recreational Resort, Inc., United States of America* vs. *Fritz Schroeder, United States of America* vs. *Albert Robert Bertram, United States of America* vs. *Guenther Gibbe, United States of America* vs. *Otto Bremer, United States of America* vs. *Theodore Koehn, United States of America* vs. *Joseph Lieblein, United States of America* vs. *Gustave Schmidt,* Nos. 8668 to 8676, October Term, 1944, to the end that these cases may be reviewed and determined by this Court as provided for by the statutes of the United States and that the judgment herein of the Circuit Court of Appeals be re-

versed by this Honorable Court, and for such other further relief as to this Court may seem proper.

GERMAN-AMERICAN VOCATIONAL LEAGUE, INC., otherwise known as DEUTSCH-AMERIKANISCHE BERUFSGEMEINSCHAFT, or D. A. B.,

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UNITED STATES OF AMERICA,
Respondent, Appellee below.

BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI.

I.

Opinion of the Court Below.

The majority opinion of the Circuit Court of Appeals appears following page of the Record and is followed immediately by the minority opinion.

II.

Jurisdiction.

(1) The jurisdiction of this Court is invoked under Section 240(A) of the Judicial Code, as amended by Act of February 13th, 1925, c. 299, 43 Stat. 938 (28 U. C. C. 347).

(2) The judgment of the Circuit Court of Appeals was entered January 31st, 1946.

III.

Statement of the Case.

A full statement of the case is included in the preceding petition under Title III.

IV.

ARGUMENT.

POINT I.

(Reasons (1) (2).)

The Foreign Agents Registration Act of 1938, as amended in 1939, only applied to agency by express contract, prior to the amendments in 1942. A question of law involving the construction and application of such United States statute now rests upon a divided opinion of the Circuit Court of Appeals, and has not been, but should be, determined by this Court.

The indictment under which petitioners were convicted was based upon the Foreign Agents Registration Act of June 8, 1938 (52 Stat. 631), as amended by the Act of August 7, 1939 (53 Stat. 1244). Sec. 2, for which failure to observe renders criminal liability, provides that: "* * * an agent of a foreign principal shall * * * file a statement * * * which shall set forth * * *".

(a) The name, business address, and residence address of the registrant;

(b) The name of the foreign principal or other person or organization for which such person is acting as agent;

(c) A copy of all contracts of employment under which such person acts or agrees to act as such agent, if written, or a full statement of the terms and conditions thereof, if oral;

(d) The date when each such contract was made, the date of commencement of activity thereunder, and the period during which such contract is to be in effect;

(e) The compensation to be paid, if any, and the form and time of payment, under such contract;

(f) The name of every foreign principal, or other person or organization which has contributed or which has promised to contribute to the compensation provided in such contract; and

(g) If the registrant be a partnership, association, or corporation, a true and complete copy of its charter, articles of incorporation, copartnership, association, constitution, and by-laws, and any other instrument or instruments, relating to its organization, powers, and purposes.

From the foregoing it is evident the Act only applies to agency created by express contract, written or oral, but not to a status of agency inferred from conduct. Subdivision (g) starts with "If". There is no such "If" proviso as to subdivision (a) to (f). It is evident that only agency arising from an express contract would subject the agent to registration, for only then could subdivision (c) to (f) be applicable without qualification.

The 1942 amendments to the Act (56 Stat. 249) revised the 1938 Act as amended. The 1942 Act includes in its definition of agent, Sec. 1,

> "Any person who acts or agrees to act, within the United States, as, or who is or holds himself out to be *whether or not pursuant to contractual relationship,* a public-relations counsel, publicity agent, information-service employee, servant, agent, representative, or attorney for a foreign principal;"

and Sec. 2, pertaining to registration, provides:

sub. 4,

> "* * * or, *where no contract exists,* a full statement of all the circumstances, by reason of which the registrant is an agent of a foreign principal; * * *"

sub. 9,

> "* * * or, *where no contract exists,* a full statement of all the circumstances, by reason of which the registrant is performing or assuming or purporting or has agreed to perform for himself or for a foreign principal or for any person other than a foreign principal any activities which require his registration hereunder;"

The matter in italics was not included in the 1938 Act. The Act as revised in 1942 includes situations of agency which may come into existence without an express contract. Such provisions not being in the 1938 Act upon which the indictment was based, cannot be implied. A criminal statute must be applied as it is written. It cannot be rewritten under the guise of interpretation by extraneous definitions. The application of the 1942 Statute, *ex post facto,* is not to be justified by denominating it as clarifying or declaratory of the previous Act. (*Viereck* v. *United States,* 318 U. S.

236, p. 247.) While the decision in the *Viereck* case did not directly pass on the particular question of law involved herein, it did re-iterate the long established principle that one may only be subjected to punishment for crime in the federal court for the commission or omission defined by Statute, not merely implicit therein.

The 1942 Act does, by its own language, apply to any agency "whether or not pursuant to contractual relationship." The language of the Act of 1938 as amended, prior to the 1942 amendments, without the aid of extraneous definitions and probably implicit meanings, cannot pertain to any agency not created by express contract. The extraneous definition of agency quoted by the lower courts, while acceptable in civil litigation, cannot be the basis of a conviction of a crime which is not adequately and with full certainty expressed in the penal statute. Congress had the same English language at its command in 1938 and 1939 as it had in 1942.

The Court below divided on the construction and application of the Act of June 8, 1938 (52 Stat. 631), as amended by the Act of August 7, 1939 (53 Stat. 1244), with the dissenting opinion (Biggs, *C. J.*) upholding petitioners' contention. No adjudication has been made by this Court on this particular application of the Statute. The present construction by the Court below is untenable and involves a question of substance relating to a Statute of the United States which should be settled by this Court.

POINT II.

(Reason 5.)

The Trial Court denied a fundamental right of cross examination of Government Witness Richards to the vital prejudice of defendants.

Richards was the star witness for the Government. He was an agent-provocateur, claimed to have previously been employed by the F. B. I. although his status was not disclosed and the F. B. I. disclaimed him.

He testified to alleged damaging admissions made by the defendants, Schroeder, Lieblein and Bertram, at drinking parties he induced them to attend in his own apartment and elsewhere. After he had procured membership in the D. A. B. he attended Chapter meetings, made Pro-German inflammatory speeches. Much of his testimony was totally uncorroborated.

The witness claimed he helped mail the magazine "Amerika Deutsche" from G. A. V. L. Headquarters (R. 974a, 975a). Schroeder in 1941 showed the witness the letter of June 23, 1941, in the German language minute book (G-102) and told him it was issued to keep the F. B. I. off their trail and camouflage and smoke-screen their activities. It had been sent to all Vocational League United States members (R. 978a-983a). The witness also helped Lieblein destroy records at the League office because they feared an F. B. I. raid.

The witness admitted on cross examination that he had refreshed his recollection from notes he had turned into

the F. B. I. (which he refused to produce), that "he remembered what he was told to remember" by the F. B. I., that when off the stand he was in semi-custody of the U. S. Attorney's office and of an F. B. I. agent. Evenings between sessions he had conferred with the District Attorney and the F. B. I. representative. His memory had to be constantly refreshed.

Part of his story had been contradicted by Government witnesses Johnson and Griffin. His credibility was at stake.

The Trial Court overruled questions on cross examination as to his present occupation (R. 1722a-1723a), the date when he first became a special agent (R. 1728a-1730a), whether, when he graduated from Manhattan College in 1934 he went into business and what business (R. 1740a-1741a), whether when he ceased to be a re-write man, he started an investigation by himself (R. 1742a-1744a), whether in fact he was not, in 1935, a Government employee, including the F. B. I. (R. 1745a), whether he attempted to join several German organizations in order to investigate subversive activities (R. 1745a-1747a), whether he paid himself for publishing the book "America's Ju-Deal" or was paid for information secured (R. 1931a), when he was first regularly employed by the F. B. I. (R. 1967a).

Of this book he composed and published in 1935 under the alias "Franklin Thompson," he claimed that everything in it was lies, but he did a good job, was proud of it, saved his country a lot of trouble thereafter. He admitted it libelled the President, Supreme Court Justices Cardoza, Brandeis and Frankfurter, Ambassador Bullitt, Governor Lehman, Mayor La Guardia and Ambassador Steinhardt.

It stated that these Justices were part of the Ju-Deal, mentioned the gold clause decision, that Justice Frankfurter did not want the Constitution to stand in the way of the Ju-Deal (R. 1722a, 1789a), that the President's administration was predominantly Jewish, a vicious circle tending to draw America into a Communist-Jewish state, that the President was a tool of the Jews (R. 1779a), that Congress was turned into a convenient rubber-stamp (R.1780a). He admitted he wrote a letter to Hitler, introducing himself as unqualifiedly willing to serve my country whether she be right or wrong (R. 1775a).

His character, integrity and truthfulness were clearly at stake. His conceit knew no bounds. This reprehensible conduct, he claimed, was purely to gain entry to the Nazi movement. The defendants had a clear right to develop that he wrote the book to circulate in Germany or for blackmail—and that his incriminating testimony was either pure imagination or unadulterated perjury.

A thorough cross examination of so extraordinary a witness was demanded as a matter of right. It was attempted by counsel *assigned* to represent the defendants, yet the trial court demanded to know whether counsel *were able to disprove* what the witness said and on being advised that counsel did not yet know, this entire line of cross examination was overruled.

The interest of the witness, his relation to the "America's Ju-Deal", his purpose in publishing it, whether to gain admission to the German society, or for financial reward as an appeal to the German people, was of utmost importance in determining his credibility, interest and bias in order for the jury to properly evaluate his incriminatory testimony.

The scope of his direct examination opened his whole life, his background and motives to full cross examination. In this situation the limits of cross examination was not within the discretion of the learned Trial Court.

Alford v. *U. S.*, 282 U. S. 687 (1931);
Dist. of Columbia v. *Clawans*, 300 U. S. 617;
Cussack v. *U. S.*, 63 Fed. 2nd 833;
Tla-Koo-Yel-Lee v. *U. S.*, 167 U. S. 274;
People v. *Lurris*, 115 N. Y. Suppl. 237;
Minner v. *U. S.*, 57 Fed. 2nd, 512;
Mayer v. *U. S.*, 78 Fed. 2nd 629;
King v. *U. S.*, 112 Fed. 988;
Stephens Dig., Evidence cited in *King* v. *U. S.*;
7 Am. & Eng. Encyc. Law 102;
1 Greenleaf Evid., 15th Ed. Sec. 250 cited in *King* case.

POINT III.

(Reason (7))

The Trial Court erred in refusing to charge as requested the elements necessary to be proved to support the allegations of the indictment.

The indictment charges a conspiracy to violate the McCormack Act and to defraud the United States by, we assume, interfering with its governmental functions and the right to have the information which would be contained in a registration statement by D. A. B. if that corporation were required to register.

From a reading of the statute it is readily seen that it contemplates the registration of those who, by contract,

act as agents in various capacities of foreign principals, whether they be foreign governments, foregin corporations or nationals of other countries. The statute also contemplates that there must be a written or oral contract between the principal and agent because it requires that if the contract is written, a copy must be furnished, or if it is oral, there must be a statement setting forth in detail all of its terms. Furthermore the statute contemplates that it shall be a contract of employment.

It stands to reason that the statute contemplates that there is a mutual agreement between the agent and his principal and not a quasi-contract and that by the terms of that agreement the agent has agreed to act as such, as "agency" is defined in the statute. In the proof introduced by the government, as we have heretofore set forth, the witnesses Johnannsen and Volbers testified to the existence prior to 1938 of an agreement whereby the D. A. B. collected membership dues and forwarded a portion of the same to representatives of the German Labor Front, an instrumentality of the German Reich, in Berlin. It was also proven from the lips of these two witnesses that the agreement to forward a portion of the membership dues collected in the United States to Germany was cancelled in the early part of 1938 and before the passage of the act requiring registration. It further appears from the testimony of these two witnesses that there was also prior to the passage of the Act a settlement entered into whereby the German Labor Front agreed to refund to D. A. B. the dues which had been paid by members and forwarded to Berlin and which had been received subsequent to the year 1933. The dues amounted to between $12,000 and $13,000.

This is the only agreement that was proven and it was also proven from the lips of these same two witnesses, one of whom was the President of D. A. B. at the time and the other an officer, that no other contract or agreement of any kind, either express or implied, existed in 1938 between D. A. B. and any foreign principal. This agreement was cancelled and the case is barren of proof that any contract or agreement of any kind was made subsequently by D. A. B. with any foreign principal.

However, it was urged by the government and charged in the indictment that certain activities of D. A. B. and its various chapters were or must have been the result of some agreement or understanding and that the defendants by fraud and subterfuge and by failing to have D. A. B. register were concealing such agreement. The activities charged in the indictment, while innocent and lawful in themselves, although set forth in a colorful and exaggerated manner in the indictment, never were proven to have been the result of any contract or agreement, and, of course, if they were not the result of a proven contract or agreement, the whole case must fall.

As the government failed to prove any express contract of employment to carry on the activities mentioned in the indictment concerning which there was some proof, it became highly important for the court, particularly in a case of this character, to clearly instruct the jury on this point. In other words, it was highly important that the jury in its consideration of the facts in the case should not get the cart before the horse. as it were, and reach the conclusion that because the various chapters of D. A. B. received from time to time certain German language magazines, showed

German motion pictures, entertained various lectures on Germanic matters and fostered, for a short time, an English language magazine in which isolationist and anti-British views appeared, that these things were done necessarily pursuant to an existing contract of employment to do the same, and that even if they should find proof of an agreement that they must also find that a defendant before he could be convicted, knew of its existence and did something or had some part in carrying it out or in concealing it.

In order, therefore, that the jury might have explicit instructions on these matters counsel submitted to the Court requests 13 to 19, 25, 28 and 29, which appear on R. XXXa, but which, for the sake of convenience, are as follows:

> "13. The burden therefore rests upon the government to prove that in August, 1938 D. A. B. was acting and continued to act at the behest or command and under the direction of the German Government. In other words that D. A. B. was employed by the German Government to act as its agent."
>
> "14. The Government must prove who conducted the negotiations to bring about such relationship or employment and when the negotiations took place."
>
> "15. The nature of the task or tasks which D. A. B. was required to perform under such agency agreement must be proven."
>
> "16. If any such agency agreement for employment by the German Reich was entered into by any individual or individuals his or their authority to act for D. A. B. and its members must be proven."
>
> "17. There must be proof that such agreement was made known to each defendant on trial."

"18. There must be proof that each defendant on trial having knowledge of such agency agreement by some act or acts of his assisted or counseled or aided D. A. B. not to file the necessary registration certificate."

"19. There must be proof that each individual defendant on trial by some deceitful act of his or by authorizing or knowingly acquiescing in the deceitful act of others aided or assisted in causing D. A. B. not to file the registration statement required under the so-called McCormack Act."

"25. Under the First Amendment to the Constitution of the United States the right of free speech and of a free press is guaranteed to all. These are rights which cannot be taken away from us. We all have the right to have our own personal opinions on any subject and to express them publicly or privately, by word of mouth or by the written word. Nothing which may have been said or written by any of the defendants on trial expressing his own views on any subject, nor any of the articles appearing in the magazines in evidence are forbidden by law. Quite the opposite. And unless the things that may have been said and the articles that were published were intentionally spoken or published as German propaganda under an existing employment agreement of D. A. B. with the German Government no law of the United States has been violated and nothing that was said or published is any part of the conspiracy charged in the indictment."

"28. That the jury must find a corrupt intent on the part of each defendant in order to convict each defendant and that if they, the defendants, acted in the honest belief that the law did not require the D. A. B. to register, the jury must find that the defendants are not guilty."

"29. That mere concert of action is not conspiracy. Persons who agree to do the act, innocent in itself, in good faith and without the use of criminal means, are not converted into conspirators because it turns out that the act would be prohibited by statute, or in the present case might be such an act from which the jury might infer evidence of a contract between the D. A. B. and the German Government."

That an indictment must contain all of the essential elements of the crime and that all of those essential elements must be proven, is elemental. *Pettibone* v. *United States*, 148 U. S. 197; *Brauer* v. *United States*, 229 Fed. 10; *United States* v. *Cruickshank*, 92 U. S. 542. The essential elements to be proven were in part set forth in these requests and were not otherwise charged by the Court. Failure to charge as requested, we urge, was reversible error.

Conclusion.

Your petitioners respectfully submit that the Circuit Court of Appeals for the Third Circuit has failed to follow the applicable decisions of this Court, and that a conflict exists between its decision and the decisions of other Circuit Courts of Appeals and of this Honorable Court, and that the questions presented by the foregoing petition should be reviewed by this Honorable Court.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 925

GERMAN-AMERICAN VOCATIONAL LEAGUE, PETITIONER

v.

UNITED STATES OF AMERICA

No. 926

D. A. B. RECREATIONAL RESORT, INC., PETITIONER

v.

UNITED STATES OF AMERICA

No. 927

FRITZ SCHROEDER, PETITIONER

v.

UNITED STATES OF AMERICA

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v.

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No. 932

JOSEPH LIEBLEIN, PETITIONER

v.

UNITED STATES OF AMERICA

No. 933

GUSTAVE SCHMIDT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The majority and dissenting opinions in the circuit court of appeals (R. 1383–1399) have not yet been reported.

JURISDICTION

The judgments of the circuit court of appeals were entered on January 31, 1946 (R. 1399–1405). The petition for writs of certiorari was filed March 9, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

The principal questions presented are:

1. Whether an organization which acted under the direction of a foreign principal in the dissemination of propaganda was required to register under the Foreign Agents Registration Act as it read prior to 1942.

2. Whether the trial judge abused his discretion in refusing, for security reasons, to permit petitioners to cross-examine a government witness who had joined the defendant organization as to his employment some years prior to the time he became a member.

Petitioners also raise but do not brief the following questions:

3. Whether the evidence is sufficient to show an agreement on the part of German American Vocational League to act as a foreign agent.

4. Whether the evidence is sufficient to connect the individual defendants with the conspiracy charged.

5. Whether propaganda analysis by a government expert was competent evidence.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutory provisions and regulations appear in the Appendix, *infra*, pp. 33–39.

STATEMENT

Petitioner, the German-American Vocational League, Inc., commonly referred to as D. A. B. (Deutsch-Amerikanische-Berufsgemeinschaft), is a corporation organized in New York State in 1928 under the name of German-American Commercial League, Inc., the name of which was changed to its present form on October 19, 1936 (R. 271–272, 412–413). D. A. B. Recreational Resort, Inc., is a New York corporation organized in 1937 to hold title to real property on behalf of D. A. B. (R. 140–141, 273). The other petitioners are members of the board of directors or officers of D. A. B. (R. 336, 492, 531, 732–733, 868, 1150, 1163, 1166, 1277–1278).

An indictment in two counts, only the second of which is material here,[1] was returned against petitioners and others in the United States District Court for the District of New Jersey. The second count charged a conspiracy to violate the Foreign Agents Registration Act of 1938, as amended, in that, well knowing that D. A. B.

[1] The first count was dismissed at the close of the Government's case (R. IX).

was an agent, publicity agent, and representative of the German Reich and various instrumentalities of that government, petitioners schemed to conceal such fact and failed to register or caused and assisted D. A. B. to fail to register as a foreign agent, as required by the statute. The essence of the scheme set forth in the indictment is that, before passage of the act, D. A. B. was an agency of various instrumentalities of the German Reich, including the German Labor Front with which it admittedly had a contract; that, although in anticipation of the passage of the Act, it cancelled its agreement with the German Labor Front, such agreement did not represent the full scope of the organization's agency; and that thereafter the organization continued to act as a German agent, concealing such fact with the aid of the petitioning officers and directors.[2] Petitioners were convicted after a trial by jury (R. X). The corporations were fined $5,000 each. The individual defendants, except petitioner Schmidt, were sentenced to imprisonment for two years (R. XI–XII). Imposition of sentence against Schmidt was suspended and he was placed on probation for five years (R. XI). The sentences against petitioners Lieblein and Schroeder run concurrently with

[2] The indictment is not printed in the record. It is summarized generally in the judge's charge (R. 1351) and some parts are set forth in the dissenting opinion below (R. 1395–1396).

terms being served by them on other charges (R. XI–XII). Petitioner Gibbe elected to enter upon service of his sentence and his full term will expire on June 19, 1946. On appeal to the Circuit Court of Appeals for the Third Circuit, the judgments were affirmed (R. 1399–1405), one judge dissenting as to the construction of the statute (R. 1391–1399).

The evidence for the Government may be summarized as follows:

A. *The agreement with the German Labor Front.*—D. A. B. developed from a union of German commercial workers (Deutschnationaler Handlungsgehilfen Verband) which, prior to Hitler's accession to power, had for many years been organized on international lines (R. 17–19, 272–273). Its policies were such that it willingly embraced national socialism (see R. 18, 371–372, 379), and, instead of being dissolved as were other labor unions, it was "absorbed" by the German Labor Front (R. 215–217; see also R. 21). The membership base of the organization in Germany was broadened to include, not only white collar workers, but other wage earners as well (R. 373). A similar change of membership took place in the American organization (R. 34–36, 374, 380, 393–394, 398). To reflect the new character of the membership, the organization changed its German name to Deutsch-Amerikanische Berufsgemeinschaft and adopted the symbol of the German Labor Front in 1935 (R. 393–394). In 1936, the English name

of the organization was changed from German-American Commercial League to German-American Vocational League, Inc. (R. 19, 145–146).

Both before and for a time after Hitler's accession to power, half of the dues paid by members of the organization was sent to the parent organization in Hamburg, Germany (R. 21, 39, 274, 283). During 1935, the German Labor Front announced that citizens of foreign countries could not be members of that organization, and it disclaimed any liability for social security benefits to American citizen members (R. 285–286). This caused concern to the D. A. B. organization in the United States, and Euting, a special representative of the Labor Front, came to this country in 1936 in order to adjust the conflict that had arisen (R. 41–42, 286). In June and July of that year Euting held a series of conferences with national officers of D. A. B. (R. 51–53, 286–287). Dr. Draeger of the German Consulate, head of the Nazi Party in New York (R. 493), attended a number of the meetings (R. 72, 310). Euting at first refused to refund any part of the dues paid by American citizens, but later agreed to recommend that an amount corresponding to the sum paid by American citizens for the period from 1933 to 1936 be refunded to the organization, provided that money was used to purchase a recreation center for the members (R. 60–62, 68,

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287–288, 290–291), and Euting's superior approved of the arrangement (R. 291, 298, 355). Euting suggested that the recreational facilities be put on a broader basis (R. 93). It was also agreed that, thereafter, dues of American citizens were to be kept in the United States and that German nationals were to be "extraordinary members" of D. A. B. who, although enjoying the privileges of the organization, were to be under the direct jurisdiction of the German Labor Front. 75 per cent of the dues of the German nationals was to be sent to Germany and 25 per cent kept by D. A. B. for overhead expenses (R. 54–56, 67–68, 73–74, 287–288, 398, 461–462). Volbers, the treasurer (R. 20) and Johannsen, the president of D. A. B. at the time the agreement was reached (R. 273), testified for the Government as to these arrangements. Their testimony differed as to whether the terms had been reduced to writing, Volbers stating that a contract had been signed (R. 62, 67, 148), whereas Johannsen denied the existence of a written agreement (R. 291, 298). Johannsen admitted that a letter on the stationery of the German Labor Front, dated January 12, 1937, embodying the above terms in relation to German nationals and promising reimbursement of an unspecified amount representing dues paid by American citizens, was prepared in the United States and subsequently sent from Germany (R. 445–447, 468; see R. 292–293). The purpose of this letter, he said, was to

have something to show in case of inquiry by the then active Dickstein congressional investigating committee (R. 495–497). On January 5, 1937, Johannsen sent a letter to chapter leaders of the organization in which he stated that "we have signed an agreement with the German Labor Front which becomes effective on January 1, 1937" (Ex. G–50, R. 422–425). In the same letter he announced that Zeglin (a member of the Labor Front) had been elected to the Board of Directors of D. A. B. and would take care of German nationals; that the German members would continue to receive monthly copies of *Der Deutsche Im Ausland* (The German Abroad), official publication of the Labor Front, and *Der Deutsche In Nord Amerika* (The German in North America), official publication of D. A. B., and that an "agreement" had been reached by which American members of D. A. B. who visited or resided in Germany would receive certain privileges through the Labor Front (R. 422–424).

During 1937, Zeglin, who was mentioned in the January 5 letter, maintained a desk in the national office of D. A. B. (R. 69–70, 301–303). Thirteen thousand dollars were paid by the Labor Front to D. A. B. through Zeglin, and part of that money was used to purchase Camp Bergiwald in New Jersey (R. 70–71, 317, 485–486). D. A. B. Resort Corp., Inc., held title to the camp on behalf of D. A. B. (R. 140–141). The site of the camp was inspected by a representative of the

German consulate as a condition precedent to the release of the funds (R. 355; see also R. 76).

In the spring of 1938, the McCormack bill for registration of foreign agents received considerable publicity (R. 79, 319). At a meeting of the board of directors of D. A. B., it was decided that registration would be undesirable (R. 80, 318). After consultation with an attorney, it was decided in June 1938 to cancel the agreement with the Labor Front (R. 80, 470–472). The problem was discussed with Dr. Draeger of the German consulate (R. 447–448, 471). Zeglin returned to Germany to discuss the fate of the German nationals and, upon his return, he left the D. A. B. office and moved to the German consulate (R. 100, 102, 357). He founded a separate organization known as R. D. V., open only to German nationals (R. 102–103). D. A. B. abolished the distinction between American and "extraordinary" German members and opened its membership to German nationals as well as American citizens (R. 106–107, 331, 473). The office holders were instructed by an official letter dated August 18, 1938, to inform members of the reorganization resulting from the cancellation of the contract, and "in case any comrades desire further information this should be given if possible in personal conversations after the meeting" (Ex. G–18, R. 330). A number of German nationals retained their D. A. B. membership (R. 108, 473, 765, 856). Furthermore, D. A. B. and the newly established

R. D. V. conducted meetings together, used the same club houses, and attended the same affairs (R. 1148, 857–858, 864).

B. *Other activities prior to the cancellation of the Labor Front Agreement.*—From 1933 on, D. A. B. and its officers were active in the dissemination of German propaganda.

Publications.—In 1933, the magazine published by the German Vocational League was known as *Der Deutsche Kaufmann Im Auslande* (The German Merchant Abroad); the D. A. B. publication was called *Der Deutsche Kaufmann In Nord Amerika* (The German Merchant in North America) (R. 21–22, 642). In April 1934 the Labor Front changed the name of its magazine to *Der Deutsche Im Auslande,* and in September 1934 D. A. B. changed the name of its magazine to *Der Deutsche in Nord Amerika* (R. 642). Both the Labor Front and the D. A. B. publications were distributed to members of D. A. B. (R. 94–96, 155–156, 403). According to the propaganda analysis of the Government's expert witness, of the 138 articles appearing in the D. A. B. publication in the period from 1935 through August 1938, 67 percent favored Germany, and none represented Germany in an unfavorable light; while 7 percent favored the United States, and five articles presented the United States in an unfavorable light (R. 660).

Official reports of the activities of D. A. B. for the years 1933 and 1934 show that "National So-

cialist enlightenment literature" was obtained from various German organizations, including the Foreign Office of German Vocational Groups, and was made available to members for study (R. 377, 383).

Speeches and Celebrations.—Throughout the years from 1933 to 1938, speakers from Germany lectured on problems of national socialism and German foreign policy (R. 121–122, 327–328, 401, 848, 869, 883, 1122). German consuls frequently attended and spoke at meetings (R. 359–360, 873, 875–876, 942). D. A. B. participated in German national holiday celebrations sponsored by the consulate (R. 360, 416–417). In conjunction with the consulate it took an active part in raising funds for Winter Relief, an official charity of the German government (R. 225, 307, 360–361, 396, 409–410, 419–420, 552–553, 881).

Films.—Films supplied by the German Railroad Information Service, an official agency of the German government (which spent large sums of money in this country but earned none here (R. 799–800, 1128)), and films supplied by the German consulate were regularly shown to members and their guests (R. 125, 127, 448–449, 782–784, 1129–1130). D. A. B. reported to the German Railroad Information Service the figures of attendance at these meetings and the German Railroad Information Service in turn made reports to Germany (R. 800–802). Among the films shown were frankly propaganda pictures, such as

"Echoes of the Homeland," "Triumph of Will," "New Boundaries" (R. 125, 394, 396, 401, 449, 786).

Youth Group.—A Youth Group, conducted by petitioner Lieblein, was fashioned on the lines of the Hitler Youth Organization (R. 400, 437–439, Ex. G–98, R. 503). In a signed statement (Ex. G–98), Lieblein admitted that "the purposes of both groups were similar to a certain extent, namely the indoctrination of its members into Nazi ideology. This indoctrination was performed through lectures at meetings." The group used Camp Bergwald as headquarters (R. 112, 503). It regularly participated in a solstice ceremony which was designed to symbolize the unity of all Germans (R. 531, Ex. G–98). In 1937 Lieblein and two members of the Youth Group visited Germany at the expense of D. A. B. through the Labor Front, and attended a camp of German Hitler Youth (R. 112, 115, 344–348, 506–507). Through Zeglin and as the result of Lieblein's efforts during his visits in Germany, a library of National Socialist literature was set up for the benefit of the Youth Group (R. 517–523, Ex. G–180).

Re-Emigration Service.—From the start the League was active in assisting persons of German stock to emigrate to Germany. The organization gave advice in this matter and conducted a special emigration advisory service (R. 382, 393). An agreement was reached with the Labor Front as

to rights of D. A. B. members returning to Germany (R. 404). When members returned to Germany they were given a letter certifying that they were members in good standing of D. A. B. (Ex. G–72, R. 560–561).

Liaison with German officials.—In addition to the visit of members of the Youth Groups to Germany, see *supra,* p. 13, other representatives of D. A. B. visited Germany and conferred with German officials. In 1937 and again in 1938, Johannsen and Glattfelder, president and secretary of the organization, made trips to Germany and conferred with officers of the German Labor Front (R. 342–343, 347, 354–355). Petitioner Schmidt was sent to Germany for treatment of his illness, but, after a rest period, he also attended the Adolph Hitler Leadership School (R. 116, 339, 435). On September 11, 1938, he wrote that he was giving a course in oratory which would enable him to use his Danzig material (R. 435). Petitioner Kiesler attended a camp which was conducted for Germans living in foreign countries at which visitors were taught how to spread propaganda (R. 906–910, 995).

As previously shown, *supra,* the organization maintained close relations with German consuls. Dr. Draeger, head of the Nazi Party in the United States, took an active part in negotiations between D. A. B. officials and Euting and inspected Camp Bergwald before it was purchased. An official of the Foreign Division of the Nazi Party visited

New York in 1936 in order to adjust relations between D. A. B. and the German-American Bund (R. 315). Dr. Draeger attended this conference as well (R. 315).

C. *Activities after cancellation of the Labor Front agreement.*—All these activities continued unabated after the cancellation of the agreement with the German Labor Front in anticipation of the passage of the Foreign Agents Registration Act.

Publications.—After cancellation of the Labor Front agreement, distribution of the Labor Front publication was discontinued, but D. A. B. supplied its members with *Der Volksdeutsche,* a publication of the Volksbund fur das Deutschtum Im Ausland (League of Germans Abroad) (R. 361, 441, 443, 770–771, 1104). This change was explained in a letter by National Leader Buttig to a member of the Chicago Chapter as follows (Ex. G–160):

> We can no longer subscribe to "Der Deutsche im Ausland" or have it delivered to us free because to do so would amount to a German tie, a connection with a German organization, the German Labor Front. Such a connection has—since last summer—been made subject to registration, as you undoubtedly know. Hence the complete severance. Instead a private organization, the V. D. A. sends us regularly, even twice a month, its publication, the "VOLKS-

> DEUTSCHE" as well as its American Information Service. We are permitted to accept those publications as gifts from a private German organization. If all chapters of your district should not regularly get copies of this publication please let me know immediately and advise whereto the publication should be sent and how many copies you desire. I shall see to it that you get them.

V. D. A. was in fact supported by the Nazi Party and the German Government (R. 226–227, 255–256), and was directed by the Institute of Propaganda and Enlightenment (R. 235).

D. A. B. continued to publish its own organ, *Der Deutsche Im Nord Amerika,* changing its name to *Der Amerika Deutsche,* after the Labor Front Publication (*Der Deutsche Im Auslande*) had been changed to *Der Auslande Deutsche* (R. 642–643). Propaganda analysis shows no appreciable change in the character of the publication (R. 661). From September 1938 (the approximate date of the Registration Act) to December 1941, 192 articles appeared in the publication, of which 65 percent favored Germany; none represented Germany in an unfavorable light; 9 percent represented the United States in an unfavorable light; and 7 percent, 15 articles, were favorable to the United States (R. 660–661). A study of the sources of the articles appearing in the publication from 1940 to 1941 shows that

more than half of the articles on topics other than organization news came from official German sources (R. 643–645). Articles were obtained from the German Railroads Information Service, some for exclusive publication in the D. A. B. magazine (R. 589, 592, 733–735).

Der Amerika Deutsche had an English column called *In Retrospect* (R. 667, 1175). In 1940, D. A. B. decided to expand its column into a separate magazine (Ex. G–161, G–169). The name of D. A. B. was not mentioned in the publication, and a trade name certificate was filed in the name of petitioner Lieblein (R. 1175–1176). Members were directed not to put the D. A. B. stamp on the publication because the magazine "ought to be read by the American reader. He need not know where the paper comes from. We are not producing the paper for the purpose of advertising ourselves, but primarily for the purpose of enlightenment" (R. 1200; Ex. G–145; see also Ex. G–161). On April 15, Lieblein wrote to petitioner Schmidt (Ex. G–169):

> The Consulate General here in New York, as well as the Association of German Nationals, have both—to give you an example—highly recognized and approved of our work in enlightenment through the distribution of our magazine "In Retrospect."

In Retrospect was mailed to members together with the German D. A. B. publication (R. 614–615, 768). Lieblein told the witness Richards

that Orgell (representative of V. D. A. in the United States (R. 119, 248)) was an important contributor to both magazines but that his activities were not openly revealed (R. 958).

Mailing lists of the Germany Library of Information were given to D. A. B., and *Facts in Review,* issued by the Library, was distributed to D. A. B. and its chapters (R. 976, 1001–1002, 1105).

Speeches and celebrations.—The organization continued to work with German consulates in support of the German Winter Relief Fund (R. 841, 843, 965–967) and continued to participate in consulate celebrations of Nazi holidays (R. 551, 844–845). After the war in Europe commenced, it aided the Kyffhaeuser Society in collecting money for German prisoners of war (R. 1271, Ex. G–26, G–162). German consuls attended important affairs of the various chapters (R. 966–968, 1114–1115, 1154, 1156), and as late as May 1941, Dr. Fricke of the German Consulate in Chicago conducted a celebration of German Labor Day for D. A. B. (R. 1108). Lecturers continued to talk on topics relating to Nazi ideology (R. 1107).

Films.—German propaganda films supplied by the consulate or the Railroad Information Service continued to be shown after the cancellation of the Labor Front Agreement. For example in 1940, the San Francisco Chapter displayed a film called "Colonial School at Rendsburg," a

German Consulate film of propaganda character (R. 1131, 1155). "Triumph of the Will," a picture widely displayed in the earlier period, was again shown in 1939 (Ex. G–151). In 1940 films were shown glorifying the triumph of German armies in Poland (R. 847, 1097).

Youth Movement.—The work of the Youth Movement continued in the same manner as before (R. 503, 532, see Ex. G–98). In 1941 Lieblein told the witness, Richards, that on July 14, 1941, he had testified before the Rapp Coudert Committee in New York that D. A. B. had no Youth Group, and that it was therefore decided to dissolve the group (R. 975). On June 22, 1941, the board of directors of D. A. B. voted to dissolve the Youth Group. The German language minutes of that meeting mention the New York investigation, whereas the English minutes of the same meeting merely reflect the decision to dissolve (R. 981–982). Parents were informed of the dissolution by a letter which indicated that further explanation would be made orally (Ex. G–179).

Re-Emigration Program.—D. A. B. continued to sponsor the program for re-emigration of German workers to work in war plants (R. 986, 1001). It continued to issue to members who returned to Germany certificates to be presented to the German Labor Front (R. 989, 1105). Such a letter, issued as late as June 1941, is in evidence (Ex. G–170).

Liaison with German Officials.—Officers of D. A. B. approached German consulates in the midwest for assistance in securing members and distributing pro-Nazi literature, including *In Retrospect* (Ex. G–177, 178). In San Francisco, Beyer, an employee of the German Railroad Information Office, was a leading member of D. A. B., and was active in liaison work between the organization and the German consul, with whom he was very friendly (R. 840, 1139–1140). In 1939, Buttig was in Germany where he reported the activities of D. A. B. to German officials (Ex. G–159). On August 28, 1939, Schroeder, president of D. A. B., wrote to a Chicago member that the time for the national convention would be fixed after he knew when Buttig would return (Ex. G–163).

D. *Activities in 1941.*—As increasing tension developed in the relations between the United States and Germany, the Board of Directors, on June 23, 1941, sent a letter to the membership in which they stated that "we are determined to live up to our oath of allegiance" (R. 983). Schroeder told the government witness, Richards, that the letter was written to keep the F. B. I. "off our trail," and he laughed as he characterized it as a camouflage (R. 978–979). In July 1941, Lieblein wrote to Greiner in Chicago, "All of you will surely understand the purpose of the letter" (Ex. G–156), and Schroeder and Lieblein both wrote Schmidt (Ex. G–155):

> You have surely received the circular of June 23 of this year, and we hope you will understand why it was sent to the entire membership. Bring it to the attention of the comrades not to destroy this letter but rather to preserve it. It should serve to clarify the standpoint of the DAB leadership to any interested agencies or persons. You understand, of course, what we mean. (Ex. G–155.)

In June 1941, the Chicago local was directed to destroy all letters of years prior to 1939 (Ex. G–153; R. 1113, see also R. 1110). Office records of national headquarters were also destroyed (R. 984–985). Schroeder told Richards that the F. B. I. had seized the remaining records, except one file which had previously been delivered to the German consulate (R. 994). After the United States entered the war, a number of suggestions were made for continuing the organization in secret (R. 1004–1006). On January 29, 1942, Lieblein expressed satisfaction with news stories announcing the dissolution of the organization because he felt they would throw the F. B. I. off the trail (R. 992–993).

In submitting the case to the jury, the judge read the statutory definition of "agent of a foreign principal," i. e., "any person who acts or engages or agrees to act as a public-relations counsel, publicity agent, or as agent, servant, representative, or attorney for a foreign principal, and shall include any person who receives com-

pensation from or is under the direction of a foreign principal" (R. 1355–1356). He subsequently charged the jury that in order to convict they must first be satisfied beyond a reasonable doubt that D. A. B. was actually an agent of one of the foreign principals mentioned in the indictment after the act became effective, that defendants knew the organization was such an agent and knew that it was required to register and did not register, and that if they found such facts, they could then consider which of the defendants "knowing the fact of the agency ~~and the fact of the agency~~ and the fact of non-registration" conspired to aid the organization not to register (R. 1358–1359).

In response to requests, he further charged (R. 1368).

> * * * I shall repeat that the burden rests upon the Government to prove that in August 1938, the effective date of this Registration Act, the D. A. B. was acting and continued to act at the behest or command and under the direction of the German Government. In other words, that the D. A. B.—and I shall amend his request—was acting as the agent of the German Government.

He further charged (R. 1369):

> * * * I shall repeat, although I have already told you that if the Government has failed to prove that the German-American Vocational League was employed as

an agent of the German Reich, then of course you must find the defendants not guilty, because the basis of the whole charge is that it was such an agent.

ARGUMENT

1. Petitioners contend (Pet. 16–17, 19, 23–26, 30–35) that the McCormack Act, prior to the amendments of 1942, required the registration only of persons who had an express contract with a foreign principal, and that the district court therefore erred in charging the jury that D. A. B. was required to register under the statute if it acted "at the behest or command and under the direction of the German Government" (R. 1368). The dissenting judge below thought an express contract was required under the act and that such a contract had not been proved, although he conceded that the evidence established that D. A. B. "was acting under the direction, indeed, under the domination" of a foreign principal (R. 1393).

An agreement to do as one is told is, however, itself a contract. Hence, we submit, that, even under the view of the statute taken by the dissenting judge below, the district court's instruction was proper. Petitioners and the dissenting judge below confuse proof of the terms of a contract with proof of its existence. The government may not have been able to establish with exactitude the details of D. A. B.'s agreement with various instrumentalities of the Reich; in fact, the agreement may deliberately have been

kept in general terms. But, as the dissenting judge below in effect conceded, the jury was required to find and the evidence conclusively establishes that D. A. B. voluntarily agreed to act as the Reich directed it to act in disseminating propaganda. The existence of an agreement with the German government was thus established. Manifestly, the fact that the government could not prove the precise terms of the agreement would not render D. A. B. immune from prosecution for failure to register, so long as the existence of an agreement were shown. Even if the agreement were merely a general one to follow directions, it was nonetheless an agreement. As the dissenting judge below himself indicated (R. 1397), it is clear that, to give rise to a duty to register under the Act, a contract of agency need not have the same specificity as might be required in a suit on a contract.

In any case, we submit that, as the majority of the court below held, the statute clearly applies to one acting under direction of a foreign principal whether or not the consent so to act is express. The definition of "agent" in section 1 of the Act as originally enacted specifically covers one who "acts or engages or agrees" to act as a propaganda agent without requiring that the agreement be express. (Appendix, *infra*, p. 33.) In 1939, the definition was amended to state even more definitely that it included "any person * * * under the direction of a foreign principal." Un-

der the judge's charge the jury had to find that D. A. B. came within the precise terms of that definition. The argument that D. A. B. was nevertheless not required to register is based on the fact that section 2 requires an agent to set forth in his registration statement the terms of his contract. One who consents generally to disseminate propaganda sent to him and to act at the direction of his principal is not incapable of complying with this section. He obviously has an understanding, express or implied, the substance of which can easily be stated. Certainly Congress did not intend to allow foreign agents to evade the duty to register merely because they failed to define with nicety the fine details of their agency. The House Report on the Act shows that the purpose of the statute was to throw the spotlight of publicity on those engaged by foreign governments to spread propaganda (H. Rep. 1381, 75th Cong., 1st sess.). The construction of the statute to apply to one who disseminates propaganda under direction of the foreign principal is thus in accord with the exact terms of the statute and with its manifest purpose.

Petitioners (Pet. 25) and the dissenting judge below (R. 1393–1394) refer to the 1942 amendments as support for their view that the prior statute was inapplicable to one acting under the direction of a foreign principal. These amendments added to the definition of agent one "who is, or holds himself out to be, whether or not pursuant to contractual relationship, a public re-

lations counsel," etc., and made similar changes in other parts of the statute (Appendix, *infra*, pp. 38–39). Conceivably, a person may act as, or hold himself out to be, an agent of a foreign government, voluntarily disseminating foreign propaganda without any agreement with that foreign government so to act. It is unnecessary here to consider whether such a person was required to register prior to the 1942 amendments. If those amendments reach any situation not covered by the prior statute,[3] it is the case of an individual who voluntarily purports or assumes to act on behalf of a principal without arrangement with that principal. That is not this case. Here the jury were specifically directed to find, and on evidence did find, that D. A. B. acted under the direction of the Reich, i. e., that it had at least an understanding with the German government to act as its propaganda agent. Such an agreement, as we have shown, was sufficient to establish that D. A. B. was under a duty to register under the statute as it read prior to the 1942 amendments.

2. George Richards, a witness for the government, testified that in 1935 he began to investigate various German organizations. In order to gain their confidence, he published in 1935 a book called *America's Jew Deal* (R. 951). Richards

[3] As the legislative history referred to by the dissenting judge shows, the Committee thought that the additions merely expressed explicitly a construction already implicit in the Act (R. 1394).

did not join D. A. B. until 1940 and his testimony relating to the defendants covers the period after that date (R. 953 ff.).

During the cross-examination of Richards, after a conference with counsel which is not reported in the record, the court announced that, because of the representation of the United States attorney that certain contemplated lines of cross-examination would be hostile to the national welfare, cross-examination thereon would not be allowed (R. 1027–1028). It appears from the record that the proposed cross-examination related to the employment of Richards when he published his book in 1935, to the source of funds for that publication, and to the date when Richards was first employed by the Federal Bureau of Investigation (R. 950, 1028–1030, 1034; see also R. xxxvii). Richards was cross-examined for more than two days, and his background, except for the particulars mentioned above, was fully explored (R. 1042 ff.).[4]

Petitioners urge (Pet. 18, 27–30) that this limitation of the cross-examination of Richards constituted reversible error. However, as the court below points out (R. 1390), the period sought to be covered by the proposed cross-examination antedated by several years the time when Richards first joined the D. A. B. It was made clear to the jury that, while he was a mem-

[4] The record is a joint appendix agreed upon by counsel which does not contain the full testimony.

ber of that organization, Richards was working for the F. B. I. (R. 950, 1052, 1057), and he was corroborated as to part of his testimony by agents in a room adjoining that in which Richards and some of the defendants met (R. 1002–1006, 1011–1018).[5] Richards admitted on the stand his anti-Nazi sentiments (see R. 1077). The proposed cross-examination could have been material only to show either anti-Nazi bias or a disposition to favor the government, and, in view of the other evidence in the case, it would have been merely cumulative. Under the circumstances, we submit that the court below properly ruled that there was no abuse of discretion on the part of the trial judge in imposing the narrow limitations which he did impose on the cross-examination of Richards. Cf. *Glasser* v. *United States,* 315 U. S.

[5] Petitioners' characterization of Richard's testimony (Pet. 27–28) is not supported by the record. There is no evidence that his memory "had to be constantly refreshed." He was not in semi-custody of the United States Attorney. He testified that the morning before he was cross-examined he had discussed dates of D. A. B. meetings with the assistant United States attorney for about half an hour, and that for part of that time the conference was interrupted by a telephone call to the assistant (R. 1042–1045). He was substantially corroborated, not only by the F. B. I. agents who testified, but by admissions made by one of the defendants who took the stand. (Cf. R. 993–994 with R. 1004–1005, 1013–1015, 1314–1315). As to witness's statement that he remembered what he was told to remember, he explained that he was told to concentrate on certain assignments, and that "if other things came up that wasn't within that scope, naturally I didn't bother with it or pay any attention to it" (R. 1052–1055).

60, 83; *District of Columbia* v. *Clawans,* 300 U. S. 617, 632; *United States* v. *Easterday,* 57 F. 2d 165, 166 (C. C. A. 2), certiorari denied, 286 U. S. 564.

3. Petitioners raise but do not brief certain other contentions.

(a). In effect they challenge the sufficiency of the evidence by asserting (Pet. 17) that there was no evidence of an agreement with the German government other than the Labor Front agreement relating to the care of German nationals and refund of dues paid by American citizens. However, even Johannsen, who testified that the letter of January 7, 1937 on Labor Front stationery was the only agreement between a German instrumentality and D. A. B. (see *supra,* p. 8), stated in his announcement to the membership that an agreement had been reached as to dissemination of the Labor Front publication and as to privileges of American members visiting Germany (*supra,* p. 9), thus showing clearly that in 1937 there was an agreement between D. A. B. and the Labor Front broader in scope than that revealed by the letter of January 7. Johannsen also testified that he arranged with Orgell for distribution of the V. D. A. magazine (*Der Volksdeutsche*) after cancellation of the Labor Front agreement in 1938 (R. 443–444). All the evidence set forth in the statement, *supra,* indicates, as the jury and the court below found, that D. A. B. and its officers did in fact agree

to act at the behest and under the direction of the German government and its instrumentalities, both prior to and after the cancellation of the Labor Front agreement. As the majority opinion below stated (R. 1388), the Labor Front agreement "was simply part of the chain of proof which assisted in showing the connection between the German Reich and its subsidiaries with the D. A. B."

(b) Petitioners also argue (Pet. 18) that there is no evidence that the individual petitioners advised or assisted D. A. B. to fail to register as required by law. Without detailing the evidence as to various acts performed by each of the petitioners, we think it is sufficient to note that all of them, except petitioner Gibbe, were members of the National Board of Directors of D. A. B. for the crucial period after passage of the McCormack Act. Gibbe was an officer of the San Francisco chapter (R. 1150, 1152, 1163), continuing to act as such after cancellation of the Labor Front agreement, although he was a German national (Ex. G–171). Schroeder was national president after 1939, and Lieblein was vice-president (R. 732–733). Lieblein was also leader of the youth group and allowed *In Retrospect* to be registered in his name (see *supra*, pp. 13, 17, 19). Bertram was secretary after 1939, and with Lieblein took care of the minutes and of all the mail (R. 1277–1278). Bremer was a leading officer of the Philadelphia chapter (R. 868, 897).

Koehn was editor of *In Retrospect* and chapter leader for Manhattan (R. 1176–1177). Schmidt was midwestern district leader (R. 1120).

The judge charged the jury that the individual defendants were guilty only if, knowing of the agency of D. A. B. and its obligation to register, they conspired to aid and abet or assist and advise the organization not to register (R. 1358–1359). He cautioned them to consider the evidence against each individual separately (R. 1361), and instructed them that mere membership or holding of office was not conclusive proof of guilt (R. 1363). The circuit court of appeals found that the evidence involved all the petitioners "as active participants in the conspiracy charged to a greater or lesser degree" (R. 1391). The question is wholly one of the sufficiency of the evidence and presents no problem for review by this Court. *United States* v. *Johnson,* 319 U. S. 503, 518; *Delaney* v. *United States,* 273 U. S. 586, 589–590.

(c) Petitioners challenge the admissibility of expert evidence of propaganda analysis as unscientific (Pet. 17–18). However, the expert testimony was largely a computation and summary of the articles appearing in the publications admitted in evidence. As to the German language publications, the analysis was based on a count of the articles favorable or unfavorable to Germany and the United States and a comparison with German source material. (See *supra,* pp. 11, 16–

17.) As to *In Retrospect,* it was an analysis of articles relating to certain themes (R. 690). The basis for the analysis was thus clearly shown, and the expert was subject to cross-examination. The judge charged the jury that this testimony was not binding but was to be given such weight as the jury thought it merited. (R. 1365–1366.) We submit that this type of analysis of articles properly in evidence was clearly competent. See *United States* v. *Pelley,* 132 F. 2d 170, 180–181 (C. C. A. 7), certiorari denied, 318 U. S. 764.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for writs of certiorari should be denied.

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APPENDIX

The Foreign Agents Registration Act of June 8, 1938, c. 327, 52 Stat. 631, 22 U. S. C. 611, *et seq.* (popularly known as the McCormack Act), as originally enacted, provided:

Sec. 1. As used in this Act—

(a) The term "person" means an individual, partnership, association, or corporation;

* * * * *

(c) The term "foreign principal" means the government of a foreign country, a political party of a foreign country, a person domiciled abroad, or any foreign business, partnership, association, corporation, or political organization;

(d) The term "agent of a foreign principal" means any person who acts or engages or agrees to act as a public-relations counsel, publicity agent, or as agent, servant, representative, or attorney for a foreign principal or for any domestic organization subsidized directly or indirectly in whole or in part by a foreign principal. Such term shall not include a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State of the United States, nor a person, other than a public-relations counsel, or publicity agent, performing only private, non-political, financial, mercantile, or other activities in furtherance of the bona fide trade or commerce of such foreign principal;

* * * * *

Sec. 2. Every person who is now an agent of a foreign principal shall, within thirty days after this Act takes effect, and every person who shall hereafter become an agent of a foreign principal shall forthwith file with the Secretary a registration statement, under oath, on a form prescribed by the Secretary which shall set forth—

(a) The name, business address, and residence address of the registrant;

(b) The name of the foreign principal or other person or organization for which such person is acting as agent;

(c) A copy of all contracts of employment under which such person acts or agrees to act as such agent, if written, or a full statement of the terms and conditions thereof, if oral;

(d) The date when each such contract was made, the date of commencement of activity thereunder, and the period during which such contract is to be in effect;

(e) The compensation to be paid, if any, and the form and time of payment, under such contract;

(f) The name of every foreign principal, or other person or organization which has contributed or which has promised to contribute to the compensation provided in such contract; and

(g) If the registrant be a partnership, association, or corporation, a true and complete copy of its charter, articles of incorporation, copartnership, association, constitution, and bylaws, and any other instrument or instruments relating to its organization, powers, and purposes.

* * * * *

Sec. 5. Any person who willfully fails to file any statement required to be filed

under this Act, or in complying with the provisions of this Act, makes a false statement of a material fact, or willfully omits to state any material fact required to be stated therein shall, on conviction thereof, be punished by a fine of not more than $1,000 or imprisonment for not more than two years, or both.

Sec. 6. The Secretary is authorized and directed to prescribe such rules, regulations, and forms as may be necessary to carry out this Act.

The Act of August 7, 1939, c. 521, 53 Stat. 1244, amended the definition of "foreign principal" and "agent of a foreign principal" to read as follows:

(c) The term "foreign principal" includes the government of a foreign country, a political party of a foreign country, a person domiciled abroad, any foreign business, partnership, association, corporation, or political organization, or a domestic organization subsidized, directly or indirectly, in whole or in part by any of the entities described herein;

(d) The term "agent of a foreign principal" means any person who acts or engages or agrees to act as a public-relations counsel, publicity agent, or as agent, servant, representative, or attorney for a foreign principal, and shall include any person who receives compensation from or is under the direction of a foreign principal: *Provided, however,* That such term shall not include—

(1) a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State of the United States; nor

(2) any official of a foreign government recognized by the United States as a government other than a public-relations counsel or publicity agent or a citizen of the United States, whose status and the character of whose duties as such official are of record in the Department of State of the United States; nor

(3) any member of the staff of or person employed by a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State of the United States, other than a public-relations counsel or publicity agent, whose status and the character of whose duties as such member or employee are of record in the Department of State of the United States; nor

(4) any person performing only private, nonpolitical, financial, mercantile, or other activities in furtherance of the bona fide trade or commerce of such foreign principal; nor

(5) any person engaged only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts.

The regulations issued on September 15, 1939, by the Secretary of State, 4 Fed. Reg. 3940, pursuant to Section 6 of the McCormack Act provided in pertinent part:

(6) The term *government of a foreign country* means any person or group of persons exercising sovereign political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group and any group or agency

to which authority or functions are directly or indirectly delegated or permitted. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority, whether such faction or body of insurgents has or has not been recognized by the United States.

* * * * *

(13) The term *foreign political organization* means a group of persons organized and existing outside the United States which is engaged in political activity or in any activity devoted in whole or in part to the establishment or the administration of a government or of a governmental system.

(14) The term *public-relations counsel* means any person who directly or indirectly informs, advises, or in any other way represents a principal in any matters pertaining to political interests or public relations or public policy: *Provided, however,* That this term shall not be held to apply to any person by reason of his being engaged in bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts, nor to any person performing only private, nonpolitical, financial, mercantile, or other activities in furtherance of bona fide trade or commerce as such terms or defined in these regulations.

(15) The term *publicity agent* means any person who is directly or indirectly engaged in the placing or disseminating within the United States of oral, written, or pictorial information or matter of any kind for publication in any manner, including publication through advertising, books, periodicals, newspapers, lectures, broad-

casts, moving picture showings, or otherwise: *Provided, however,* That this term shall not be held to apply to any person by reason of his being engaged in the dissemination of material, information, or ideas in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts, nor to any person performing only private, nonpolitical, financial, mercantile or other activities in furtherance of bona fide trade or commerce as such terms are defined in these regulations.

The Act of April 29, 1942, c. 263, 56 Stat. 248, amended the original McCormack Act, to read in pertinent part as follows:

* * * * *

Sec. 1 (c) Except as provided in section 1 (d) hereof, the term "agent of a foreign principal" includes—

(1) any person who acts or agrees to act, within the United States, as, or who is or holds himself out to be whether or not pursuant to contractual relationship, a public-relations counsel, publicity agent, information-service employee, servant, agent, representative, or attorney for a foreign principal;

* * * * *

Sec. 2 * * * The registration statement shall include the following, which shall be regarded as material for the purposes of this Act:

* * * * *

(4) Copies of each written agreement and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no contract exists, a full statement of all the circum-

stances, by reason of which the registrant is an agent of a foreign principal; a comprehensive statement of the nature and method of performance of each such contract, and of the existing and proposed activity or activities engaged in or to be engaged in by the registrant as agent of a foreign principal for each such foreign principal;

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